**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TERRENCE WALDEN,

               Movant,

v.

UNITED STATES OF AMERICA,

               Respondent.

CASE NO. 05-80435
HON. MARIANNE O. BATTANI

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OPINION AND ORDER

I.   INTRODUCTION

Before the Court is Movant's Motion to Modify Sentence (Doc. No. 16) in light of

Sentencing Commission Amendment 706, approved Dec. 11, 2007, which allows courts to apply

the Sentencing Guidelines' crack cocaine penalty reduction retroactively. Under 18 U.S.C. §

3582, the Court is authorized to modify the sentence of "a defendant who has been sentenced to

a term of imprisonment based on a sentencing range that has subsequently been lowered by the

Sentencing Commission." 18 U.S.C. § 3582(c)(2). Section 1B1.10(c) of the Sentencing

Guidelines lists the applicable Sentencing Commission amendments under which a reduction is

appropriate. U.S. SENTENCING GUIDELINES § 1B1.10(c).

Sentencing Commission Amendment 706 permits Courts to adjust older crack cocaine

sentences downward in accordance with a recent amendment to the Sentencing Guidelines

lessening the severity of crack cocaine offenses. Amendment 706, however, does not become

effective until March 3, 2008, and thus is not currently included in § 1B1.10(c) of the Sentencing Guidelines. To the extent that Movant's motion is based on Amendment 706, he cannot be granted relief until Amendment 706 is listed as an applicable basis for adjustment in § 1B1.10(c).

Because Movant's motion was entered prior to the effective date of the Sentencing Guidelines amendment under which he seeks relief, the Court has no choice but to **DISMISS** Movant's Motion to Modify Sentence.

Accordingly, **IT IS HEREBY ORDERED** that Movant's Motion to Modify Sentence is **DISMISSED.**

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATED: 1/18/08

CERTIFICATE OF SERVICE

Copies of this Order were served upon counsel of record on this date by ordinary mail and electronic filing.

s/Colette Motowski
SECRETARY

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